

**Maryland General Assembly
Department of Legislative Services**

**Proposed Regulations
Department of Natural Resources**
(DLS Control No. 16-216)

Overview and Legal and Fiscal Impact

The regulations (1) establish the hunting violations for which a conviction authorizes the Department of Natural Resources to suspend a hunting license or the privilege to hunt; (2) require a person convicted of specified acts of deer poaching to pay restitution and perform community service; (3) update the restitution values for wildlife other than deer; and (4) incorporate by reference a scoring system for non-typical whitetail and Coues' deer.

The regulations present no legal issues of concern.

There is no material fiscal impact on State or local agencies.

Regulations of COMAR Affected

Department of Natural Resources:

Wildlife: Hunting Privilege, Suspension and Restitution:
COMAR 08.03.16.01 through .05

Legal Analysis

Background

Chapter 698 of 2012 (the Wildlife Poaching Prevention Act) authorizes the department to suspend a person's hunting license or privilege to hunt for up to five years if the person is convicted of a State or federal hunting violation. The department is required to adopt regulations to establish criteria for the suspension of a hunting license or the privilege to hunt.

Chapters 663 and 664 of 2016 (the Poaching Restitution Act) require a court to order a person convicted of poaching deer in the State to pay a penalty of restitution to the State and perform community service. For an act of poaching that involves trespassing, restitution applies only if the person trespasses in a knowing or willful manner. The criteria for determining the amount of the required restitution is based on the gender or species of the deer poached and the value of the deer poached based on the Boone and Crockett scoring system for white-tailed deer. The department is required to adopt regulations governing restitution for deer poaching.

Summary of Regulations

The regulations establish three categories of hunting violations for which a conviction authorizes the department to suspend the offender's hunting license or privilege to hunt. The three categories of violations may result in one-, three-, or five-year suspensions, respectively. Hunting violations subject to a one year suspension include hunting specified species out of season, killing a threatened or endangered species, and the unlawful use of bait. Hunting under a suspended or revoked license or hunting with a firearm while under the influence of alcohol or a recreational drug subjects the offender to a three year suspension. Hunting violations subject to a five year suspension include negligently killing or wounding another person or intentionally or willfully destroying or damaging property or livestock of another person.

The regulations also require a person convicted of deer poaching to pay restitution and perform community service. Restitution and community service under the regulations applies to deer poaching (1) after legal shooting hours; (2) during closed season; (3) in violation of a bag limit or department issued permit; (4) with an illegal weapon; or (5) while trespassing. A person who poaches an antlered (male) white-tailed deer that obtains a score exceeding 150 points on the Boone and Crockett Club official scoring system is subject to restitution of between \$5,000 and \$10,000, inclusive, and 80 hours of community service. A person who poaches a sika deer or an antlered white-tailed deer that obtains a score of 150 points or less is subject to restitution of between \$2,000 and \$5,000, inclusive, and 80 hours of community service. An antlered white-tailed deer with eight antler points or less is deemed to have a score of 150 points or less. A person who poaches an antlerless (female) white-tailed deer is subject to restitution of between \$300 and \$500, inclusive, and 40 hours of community service.

The regulations further update the restitution values for wildlife other than deer that a court may impose for the unlawful injury, death, or destruction of the wildlife. In a separate submission to the Joint Committee on Administration, Executive, and Legislative Review, the department is repealing COMAR 08.03.10.11, which currently governs restitution values for unlawfully injured, killed, or destroyed wildlife.

Lastly, the regulations incorporate by reference the Boone and Crockett Club Official Scoring System for North American Big Game Trophies: Non-Typical Whitetail and Coues' Deer, 2015.

Legal Issues

The regulations present no legal issues of concern.

Statutory Authority and Legislative Intent

The department cites §§ 10-1101.1, 10-1107, and 10-1108 of the Natural Resources Article as statutory authority for the regulations. Section 10-1101.1 establishes restitution and community service penalties for deer poaching that are identical to those proposed under the regulations. Section 10-1108 authorizes the department to suspend for up to five years the hunting license or hunting privileges of a person who is convicted of a State or federal hunting violation and requires

the department to adopt regulations establishing the criteria for the suspensions. Section 10-1107 requires the department to establish a schedule of restitution values for individual wildlife species for courts to follow when imposing penalties for hunting violations that result in the injury, death, or destruction of wildlife.

This authority is correct and complete. The regulations comply with the legislative intent of the law.

Technical Corrections and Special Notes

The committee should note that § 10-1101.1 of the Natural Resources Article requires that for restitution to apply to a deer poaching conviction based on trespass on another's property, the violation must have occurred in a knowing and willful manner. Although the regulations do not reference this element of criminal intent, a court would still have to find that this element is present before imposing restitution in these circumstances.

In addition, in response to a suggestion from the Department of Legislative Services, staff for the department agrees to correct the potential penalties for poaching antlerless white-tailed deer from including restitution and community service to including restitution or community service in accordance with § 10-1101.1 of the Natural Resources Article.

Fiscal Analysis

There is no material fiscal impact on State or local agencies.

Agency Estimate of Projected Fiscal Impact

The department advises that the regulations have minimal or no impact on State or local governments. The Department of Legislative Services generally concurs and notes that, in part, the regulations implement Chapters 663 and 664 of 2016 (Senate Bill 266/House Bill 410) and Chapter 698 of 2012 (House Bill 1052). The fiscal and policy notes for Senate Bill 266/House Bill 410 of 2016 estimated that the restitution provisions could result in an increase in special fund revenues for the State Wildlife Management Protection Fund. The fiscal and policy notes also indicated that the bills were not expected to have a material impact on State expenditures. The fiscal and policy note for House Bill 1052 of 2012 estimated that there was no significant impact on State finances.

In addition to implementing those Acts, the regulations modify the restitution values for wildlife species other than deer. The department advises that it does not expect these provisions to have a material fiscal impact because restitution is rarely awarded. The Department of Legislative Services generally concurs but notes the possibility that the amount of restitution collected could be affected due to the changes in the restitution amounts for certain species.

Impact on Budget

There is no material impact on the State operating or capital budget.

Agency Estimate of Projected Small Business Impact

The department advises that the regulations have minimal or no economic impact on small businesses in the State. The Department of Legislative Services concurs.

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